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IN THE HIGH COURT OF JUDICATURE AT BILASPUR

(CHHATTISGARH)

W.P. No. 3645 /2005

PETITIONER:

/ Dharmendra Jain aged
about 32 years, S/o
Khemachand Jain R/o
Kamptee Line,
Rajnandgaon, Distt.
Rajnandgaon (C.G.)

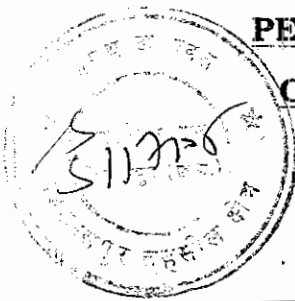
VERSUS

RESPONDENTS:

- 1/ State of Chhattisgarh
Through the Secretary,
Department of Law and
Legislative Affairs,
D.K.S.Bhawan, Raipur
- 2/ High Court of Chhattisgarh,
Through Registrar General
Bilaspur, C.G.
- 3/ Chhattisgarh Lok Seva
Ayog, Shankar Nagar Road,
Raipur, (C.G.)

P.R. No. 3744/05
Presented by Shri. S. H. N. P. J.
dated 21.8.05

PETITION UNDER ARTICLES 226 OF THE CONSTITUTION
OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OF
MANDAMUS AND CERTIORARI AND FOR OTHER
SUITABLE WRITS AND DIRECTIONS:-



HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

WRIT PETITION NO. 3645 OF 2005

Dharmendra Jain

Versus

State of Chhattisgarh & Others

POST FOR ORDER ON 19th SEPTEMBER, 2005

**Sd/-
Satish K. Agnihotri
Judge**

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Satish K. Agnihotri, J

WRIT PETITION NO. 3645 OF 2005

Dharmendra Jain

Versus

State of Chhattisgarh & Others

Mr. Kanak Tiwari, Sr. Advocate with Mr. Jitendra Pali, learned counsel for the petitioner.

Mr. Vivek Sharma, learned Panel Lawyer for the State of Chhattisgarh / respondent No.1.

Mr. Sanjay K. Agrawal, learned counsel for respondent No.2.

Mr. Y.C. Sharma, learned counsel for respondent No.3.

ORDER

(19th September, 2005)

The present petition filed under Article 226 of the Constitution of India impugnes communication / decision dated 21.07.2005 (Annexure P-4) passed by the Chhattisgarh Lok Seva Ayog, Raipur - respondent No.3, whereby the petitioner was disqualified due to mentioning of the identification mark in the first answer sheet.

2. The facts in brief are that the petitioner, pursuant to advertisement No.02/2004/Examination dated 19.08.2004, applied for Judicial Services Main Examination, 2004 for the appointment to the post of Civil Judges Class-II. Clause 12(d) in the advertisement prohibits mentioning of roll number and / or name elsewhere except at given place, as the same would be treated as identification mark. It was further provided that the candidature of the examination of the candidate would be cancelled without notice to the candidate. In the admit card for Judicial Services

Main Examination, 2004 Clause 3 of the instructions and guidelines further provided that writing of name and roll number in the answer sheet at any place other than the prescribed one and attaching any document or writing in any other colour, except in blue or black ink pen or dot pen would be treated as identification mark and the result thereof would be cancelled. Clause 4 – Identification Mark – in instructions and guidelines for the examinees stated in the second page of the answer sheet provides that the examinee would mention his roll number at prescribed place. The examinee would not mention his roll number or his name or his address which may indicate as identification, anywhere in the answer sheet. The examinee would further not annex any material with the answer sheet. The examinee would use blue or black ink pen or dot pen and not any other pen or ink. In case the candidate contravenes the above stated instructions, the examination of the candidate would be cancelled. The petitioner received communication / decision dated 21.07.2005 (Annexure P-4) whereby it was stated that the petitioner had put an identification mark in violation of Clause 3 of the instructions in the admit card, Clause 4 of the instructions in the answer sheet and Clause 12(d) of the advertisement. Thus, the petitioner was declared as disqualified for Judicial Services Main Examination, 2004. The petitioner submitted his reply on 30.07.2005 (Annexure P-5) seeking more details about the communication / decision dated 21.07.2005.

3. The petitioner, being aggrieved, filed this writ petition under Article 226 of the Constitution of India praying that the communication / decision dated 21.07.2005 (Annexure P-4) be quashed and the respondents be directed to evaluate the answer sheet of the petitioner and to further declare the result thereof. The respondents filed their reply submitting that the petitioner has violated not only the stated instructions / guidelines in

the communication / decision dated 21.07.2005, but further Clause 3 of the instructions / guidelines in the answer sheet, which provided that the examinee would not write his roll number anywhere except in the prescribed place and would perform rough work on the last page of the answer sheet, i.e. page No.24 only. This further provided that in addition, writing any thing or copying question paper is punishable. Respondents submitted that the petitioner by writing religious words in the last rough page has violated Clause 3 as provided in the answer sheet and as such the petitioner was rightly declared as disqualified.

4. Mr. Kanak Tiwari, learned Senior counsel with Mr. Jitendra Pali, learned Advocate for the petitioner submitted that the petitioner has not committed violation of any of the clauses as stated in the communication / decision dated 21.07.2005. The petitioner by writing / scribbling "ॐ गणेशाय नमः ॐ सरस्वतीमाताय नमः ॐ पार्थ्वनाथाय नमः" on the last page i.e. captioned as "rough work" has not violated even the instruction No.3 as stated in the reply of the respondent No.3. Learned counsel for the petitioner further submitted that the petitioner had not written his roll number, name or address at any other place except at the prescribed place. The petitioner had not annexed any material which could be treated as identification mark and writing name of the god at the last page i.e. rough page, i.e. page No.24, which is not meant for valuation, had performed his religious duty not with the purpose to mention any identification mark. The last page was not supposed to be evaluated as per the instructions. Learned counsel for the petitioner further submitted that it may be a bonafide mistake but it does not come under mischief of identification. If the petitioner's candidature is rejected and he is declared for the Judicial Services Examination, 2004, as disqualified, he would

suffer irreparable loss and as such learned counsel for the petitioner submitted that the petition deserves to be allowed and respondents be directed to declare the result of the petitioner and allow him to participate in the interview, if found qualified for the same.

5. Mr. Y.C. Sharma, learned counsel for respondent No.3 – Chhattisgarh Lok Seva Ayog, submitted that the petitioner had violated instructions as clearly provided in the advertisement, admit card and answer sheet by mentioning identification mark in the answer sheet. The instructions / guidelines prescribed in the advertisement, admit card and in the answer sheet are illustrative, not exhaustive, even writing the name of God amounts to identification mark and the fault cannot be found with respondent No.3 as respondent No.3 had cancelled the candidature of the petitioner and disqualified him for having the examination fair, above-board and in public interest. The petitioner has deliberately put a mark which is prohibited and which tantamounts to identification mark.

6. Mr. Sanjay K. Agrawal, learned counsel for respondent No.2 – High Court of Chhattisgarh, submitted that the stand of the Chhattisgarh Lok Seva Ayog – respondent No.3, is just & proper and it needs no interference by this Hon'ble Court.

7. Mr. Vivek Sharma, learned Panel Lawyer for the State of Chhattisgarh adopts the contentions of other respondents.

8. I have gone through the original answer sheet and the proceedings recorded by respondent No.3 before issuing impugned communication / decision dated 21.07.2005, on perusal of the papers, I found that at the back page i.e. page No.24 below the caption "rough work", the petitioner has written "ॐ गणेशाय नमः ॐ सरस्वतीमाताय नमः ॐ पार्श्वनाथाय नमः". The

instruction provided to put a cross (X) mark after using the page meant for rough work, but the petitioner had drawn one line, not cross mark. I have further perused the proceeding whereby the decision was taken to disqualify the petitioner, it was clearly mentioned that the petitioner has violated instructions/ guidelines given in the answer sheet by putting religious words on the last page i.e. page No.24.

9. **Clause 12(d) of the advertisement reads as under:**

"(घ) पहचान चिन्ह—

उत्तर पुस्तिका पर परीक्षार्थी केवल निर्धारित स्थान पर ही अपना अनुक्रमांक लिखें । यदि उम्मीदवार उत्तरपुस्तिका के अन्य किसी भाग पर अनुक्रमांक एवं/या अपना नाम लिखेंगे तो उसे पहचान चिन्ह बनाना माना जायेगा । ऐसे पहचान चिन्ह वाले प्रकरणों में आवेदकों को नोटिस देना अनिवार्य नहीं रहेगा तथा बिना किसी सूचना के उनकी उम्मीदवारी तथा परीक्षा निरस्त की जा सकेगी ।"

Clause 3 of the Admit Card read as under :

"तीन — पहचान चिन्ह—

उत्तरपुस्तिका पर परीक्षार्थी केवल निर्धारित स्थान पर ही अपना नाम और अनुक्रमांक लिखें । उत्तरपुस्तिका के अन्य किसी भी भाग पर न तो अनुक्रमांक न अपना नाम और न ही पता अंकित करें जिससे परीक्षार्थी की पहचान के बारे में कोई बोध हो सके । उत्तरपुस्तिका के साथ अन्य कोई सामाग्री संलग्न करना वर्जित है, यह पहचान चिन्ह बनाना माना जायेगा केवल नीली अथवा काली स्थायी का पैन या डॉटपेन उपयोग में लाया जा सकता है । अन्य रंग वर्जित माने जायेंगे । पहचान चिन्ह अंकित करने वाले आवेदकों की परीक्षा निरस्त की जावेगी ।"

Clause 3 and 4 of the Answer sheet reads under :

"3. परीक्षार्थी प्रश्नपत्र पर भी अनुक्रमांक लिखें तथा रफ कार्य प्रश्न पत्र तथा उत्तरपुस्तिका के अंतिम पृष्ठ पर ही करें इसके अतिरिक्त कुछ भी लिखना प्रश्नपत्र की नकल करना या उसकी प्रति बनाना निषिद्ध होकर

अनुचित साधन प्रयोग के समान दण्डनीय है । कृपया रफ कार्य करने के बाद उक्त पृष्ठ को (X) कास कर दें”

“4. पहचान चिन्ह—उत्तर पुस्तिका पर परीक्षार्थी केवल निर्धारित स्थान पर ही अपना अनुक्रमांक लिखें । उत्तर पुस्तिका के अन्य किसी भी भाग पर न तो अनुक्रमांक न अपना नाम और न ही पता अंकित करें जिससे परीक्षार्थी की पहचान के बारे में कोई बोध हो सके । उत्तर पुस्तिका के साथ अन्य कोई सामग्री संलग्न करना वर्जित है । यह पहचान चिन्ह बनाना माना जायेगा केवल नीली अथवा काली स्याही का पेन या डॉट पेन उपयोग में लाया जा सकता है अन्य रंग वर्जित माने जायेंगे । पहचान चिन्ह अंकित करने वाले आवेदकों की परीक्षा निरस्त की जावेगी ।”

On bare perusal of the instructions / guidelines stated in the advertisement / admit card and the answer sheet, it is very clear that writing anything on any page including the rough page is prohibited and punishable. Clause 5 of the instructions / guidelines for the examinees in the answer sheet clearly provides that writing additional word on any page tantamounts to use of illegal means and the same is punishable including cancellation of the result and rejection of the candidature by declaring the candidate as disqualified.

10. In the case of Karnataka Public Service Commission and others vs. B.M. Vijaya Shankar and others, reported in (1992) 2 Supreme Court Cases 206, cited by learned counsel for respondent No.2, the Supreme Court has held as under:

“3. Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of

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the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a bona fide mistake. But that is not material. What was attempted to be achieved by the instruction was to minimize any possibility or chance of any abuse. Larger public interest demands insistence of observance of instruction rather than its breach.

4. Was natural justice violated? Natural justice is a concept which has succeeded in keeping the arbitrary action within limits and preserving the rule of law. But with all the religious rigidity with which it should be observed, since it is ultimately weighed in balance of fairness, the courts have been circumspect in extending it to situations where it would cause more injustice than justice. Even though the procedure of affording hearing is as important as decision on merits yet urgency of the matter, or public interest at times require flexibility in application of the rule as the circumstances of the case and the nature of the matter required to be dealt may serve interest of justice better by denying opportunity of hearing and permitting the person concerned to challenge the order itself on merits not for lack of hearing to establish bona fide or innocence but for being otherwise arbitrary or against rules. Present is a case which, in our opinion, can safely be placed in a category where natural justice before taking any action stood excluded as it did not involve any misconduct or punishment.

5. Competitive examinations are required to be conducted by the Commission for public service in strict secrecy to get the best brain. Public interest requires no compromise on it. Any violation of it should be visited strictly. Absence of any expectation of hearing in matters which do not affect any interest and call for immediate action, such as the present one, where it would have delayed declaration of list of other candidates which would

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have been more unfair and unjust are rare but well recognized exceptions to the rule of natural justice."

11. In the case of M.T. Khan and others vs. Govt. of A.P. and others, reported in (2004) 2 Supreme Court Cases 267, cited by learned counsel for respondent No.2, the Supreme Court has held as under:

"xxx xxx xxx. It is now well-settled principle of law that in mentioning or wrong mentioning of a provision of law does not mandate an order in the event it is found that a power therefore exists."

12. I have heard learned counsel for the parties, and perused the records of the case, including the answer sheet and the decision of the Chhattisgarh Lok Seva Ayog. I am of the opinion that it is not in dispute that the petitioner had used unfair and illegal means by writing religious words as stated above on the last page of the answer sheet captioned as "rough work". It is violative of instructions and guidelines issued time to time in the advertisement, the admit card and the answer sheet. The communication / decision dated 21.07.2005 cannot be vitiated on the ground that respondent No.3 had not mentioned in the communication / decision that the petitioner had violated clause 3 or clause 5 of the instructions / guidelines mentioned in the answer sheet. The mentioning of additional word, like religious words in the present case, is certainly use of additional words in the answer sheet, which is strictly prohibited under clause 3 of the instructions / guidelines in the answer sheet. In the present case, the action could not be termed as arbitrary and there is no violation of principles of natural justice as the same would delay the process of selection and the unfair means employed by the petitioner is evident on the face of record.

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13. The competitive examination like the present one, are required to be conducted in strict secrecy in public interest and in a very fair manner to enthruse confidence in it. The petitioner had admittedly put his identification mark on the answer sheet by writing some religious words on the last page of the paper, which tantamounts to use of illegal means also.

14. For the reasons stated above, writ petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Sarma